

**PLEASE TAKE NOTICE** that, upon the annexed Declaration of Jarrett M. Behar, dated October 29, 2018, and upon the bases set forth in the motion for summary judgment filed by Delaware North Islandia Properties, LLC a/k/a Delaware North, at Docket No. 62, the full contents of which are repeated and reiterated as if set forth at length herein, and are deemed fully incorporated by specific reference thereto, defendants Incorporated Village of Islandia and the Board of Trustees of the Incorporated Village of Islandia (the “Village”), shall move this Court

on November 28, 2018 at 2:00 p.m. or as soon thereafter as counsel may be heard, before the Honorable Carla E. Craig, United States Bankruptcy Court for the Eastern District of New York, 271-C Cadman Plaza East, Brooklyn, New York 11201, for an order awarding the Village summary judgment dismissing the Amended Complaint of plaintiffs Jennifer Tomasino, Kevin Montano, Richard Meyer, and April Meyer, and awarding the Village such other, further, and different relief as the Court deems just and proper under the circumstances.

Dated: Central Islip, New York  
October 29, 2018

**SINNREICH KOSAKOFF & MESSINA LLP**

By: \_\_\_\_\_  
Jarrett M. Behar  
Michael Stanton  
*Attorneys for Defendants Incorporated Village of Islandia and Board of Trustees of the Incorporated Village of Islandia*  
267 Carleton Avenue  
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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

SUFFOLK REGIONAL OFF-TRACK  
BETTING CORPORATION,

Adjusted Debtor.

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JENNIFER TOMASINO, KEVIN MONTANO,  
RICHARD MEYER and APRYL MEYER,

Plaintiffs,

-against-

INCORPORATED VILLAGE OF ISLANDIA,  
BOARD OF TRUSTEES OF THE INCORPORATED  
VILLAGE OF ISLANDIA, DELAWARE NORTH  
ISLANDIA PROPERTIES, LLC a/k/a DELAWARE  
NORTH, and SUFFOLK REGIONAL OFF-TRACK  
BETTING CORPORATION,

Defendants.  
-----X

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: Chapter 9

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: Case No.: 12-43503 (CEC)

:  
: Adv. Proc. No. 18-1033 (CEC)

**DECLARATION OF JARRETT M. BEHAR IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS  
INCORPORATED VILLAGE OF ISLANDIA AND  
BOARD OF TRUSTEES OF THE INCORPORATED VILLAGE OF ISLANDIA**

**JARRETT M. BEHAR**, under penalty of perjury and pursuant to 28 U.S.C. § 1746,  
hereby declares as follows:

1. I am a partner with the law firm of Sinnreich Kosakoff & Messina, LLP, attorneys  
for defendants Incorporated Village of Islandia and the Board of Trustees of the Incorporated  
Village of Islandia (collectively, the “Village”) in this action. I am fully familiar with the facts  
and circumstances set forth herein.

2. I submit this declaration in support of the Village's motion for summary judgment dismissing the plaintiffs' Amended Complaint in its entirety. The bases upon which summary judgment is requested are set forth in detail in the Motion for Summary Judgment and the documents submitted in support thereof by co-defendant Delaware North Islandia Properties, LLC a/k/a Delaware North at Docket No. 62 (the "Delaware North Summary Judgment Motion").

3. The full and complete contents of the Delaware North Summary Judgment Motion are incorporated herein by specific reference thereto. The Village repeats, reiterates, and re-asserts each and every argument set forth in the Delaware North Summary Judgment Motion with the same force and effect as if fully set forth herein.

4. Briefly, however, summary judgment should be granted for the following reasons:

a. the Village did not bargain away its legislative authority and at all times exercised its independent judgment, necessitating dismissal of plaintiffs' cause of action for contract zoning;

b. the Village did not engage in impermissible "spot zoning," because: (i) it did not re-zone the subject property; (ii) the Local Law applies to the entire OI zoning district; (iii) the Village's passage of the subject Local Law benefited the Village as a whole rather than a single landowner; (iv) the use of the subject property as a gaming facility is consistent with the surrounding land uses in the OI zoning district; (v) the Village followed the proper procedure in evaluating the benefits of passing the subject Local Law while acting in a manner consistent with the Village's Comprehensive Plan, as amended; and (vi) plaintiffs have not carried their heavy burden of establishing the absence of a rational basis for the Village enacting the subject Local Law; and

c. plaintiffs are not entitled to a permanent injunction because: (i) as noted above, they do not have a substantive claim for which they are entitled to relief; (ii) they have not established that they are under the imminent threat of irreparable harm; (iii) they have not identified the absence of an adequate remedy at law; and (iv) the equities do not favor them.

I declare under penalty of perjury that the foregoing is true and correct. Executed on  
October 29, 2018 in Central Islip, New York.

/s/  
Jarrett M. Behar